TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 57.

THE STATE OF INDIANA EX REL. WALTER STANTON, TRUSTEE, PLAINTIFF IN ERROR,

vs.

ARISTA GLOVER, JAMES F. GLOVER, KITANN GLOVER, THOMAS M. RINN, AND DANIEL F. GRUENERT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED NOVEMBER 7, 1890.

(14,410.)

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and eighty-six, before the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

THE STATE OF INDIANA on the Relation of WALTER STANTON, Trustee, *vs.* ARISTA GLOVER, JAMES F. GLOVER, KITANN GLOVER, THOMAS M. RINN, and DANIEL F. GUMERT.	8075.	Civil Action.

Be it remembered that heretofore, to wit, at the November term, 1885, of said court, on the 22d day of December, 1885, before the Honorable William A. Woods, judge as aforesaid of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the plaintiff, by Messrs. Claypool and Ketcham, his attorneys, and files complaint in the above-entitled cause in the words following, to wit (complaint afterwards amended; and as amended refiled. See page 5, this transcript).

2 And afterwards, at said November term, on the 31st day of December, 1885, before the Honorable William A. Woods, judge of said court as aforesaid, the following further proceedings in said cause were had, to wit:

Comes now the defendant Thomas M. Rinn, by McDonald, Butler and Mason, his attorneys, and enters his appearance herein.

And afterwards, at said November term, 1885, on the 8th day of January, 1886, before the honorable judge aforesaid, the following further proceedings in said cause were had, to wit:

Comes now the defendant Thomas M. Rinn, by McDonald, Butler & Mason, his attorneys, and files his motion to require the plaintiff to file the exhibits referred to in the complaint; which motion is in the words following.

And at the same time said defendant, by his said attorneys, files his motion to dismiss the above-entitled cause for want of jurisdiction; which motion is in the words following.

And afterwards, at said November term, on the 9th day of January, 1886, before the honorable judge aforesaid, the following further proceedings in said cause were had, to wit:

Come now the defendants James F. Glover and Kitann Glover, by Paul and Humphreys and T. S. Rollins, their attor-
3 neys, and enter their appearance herein.

And afterwards, to wit, at said November term, on the 20th day of January, 1886, before the honorable judge aforesaid, the following further proceedings were had in said cause, to wit:

Come now the defendants Daniel F. Gunmert and Arista Glover, by Paul & Humphreys and T. S. Rollins, their attorneys, and enter their appearance herein.

And afterwards, to wit, at said November term, on the 30th day of April, 1886, before the honorable judge aforesaid, the following further proceedings were had in said cause, to wit:

Comes now the defendant Thomas W. Rinn and by leave of court withdraws his motion to dismiss for want of jurisdiction, heretofore filed, and now files his separate demurrer to plaintiff's complaint; which demurrer the court now sustains; to which ruling the plaintiff now excepts.

And afterwards, to wit, at the May term, 1886, of said court, on the 6th day of May, 1886, before the honorable judge aforesaid, the following further proceedings in said cause were had, to wit:

4 The appearance entered by Paul & Humphreys and T. S. Rollins for the defendant Arista Glover is by permission of the court withdrawn, said appearance having been entered by mistake; and the defendants James Glover, Kitann Glover, and Daniel F. Gaumert now file their joint demurrer to the plaintiff's *complaintiffs* complaint in the words following, to wit. And the court, being sufficiently advised, sustains said demurrer; to which ruling of the court the plaintiff excepts.

And afterwards, at said May term, on the 6th day of July, 1886, before the Honorable Walter Q. Gresham and William A. Woods, judges, the following further proceedings in said cause were had, to wit:

Comes now the defendant Rinn, by McDonald, Butler & Mason, his attorneys, and, upon motion, the plaintiff is ruled to amend his complaint herein in five days or show cause why he has not done so.

And afterwards, at said May term of said court, on the 17th day of July, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in said cause were had, to wit:

Comes now the plaintiff, by Claypool & Ketcham, his attorneys, and files his amended and substituted complaint herein in the words following, to wit (complaint afterwards amended, and as amended refiled. See page 5, this transcript).

5 And afterwards, at said May term, on the 23d day of August, 1886, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

Comes now the defendant Thomas M. Rinn, by McDonald, Butler & Mason, his attorneys, and files his demurrer to the amended and substituted complaint herein in the words following, to wit.

And afterwards, at said May term, on the 30th day of August, 1886, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

Come now the parties, by their respective attorneys, and thereupon the court, being sufficiently advised, doth now sustain the demurrer of the defendant Rinn to the amended complaint.

And afterwards, at said May term, on the 3rd day of September, 1886, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

Comes now the plaintiff, by Claypool & Ketcham, his at-
6 torneys, and files his complaint as amended herein in the words following, to wit:

Amended and Substituted Complaint.

The State of Indiana on the relation of Walter Stanton, who is trustee of an express trust and who is a citizen of the State of New York, by way of an amended and substituted complaint, by leave of the court first had and obtained, complains of the defendants, Arista Glover, James F. Glover, Kitann Glover, Thomas M. Rinn, and Daniel F. Gumert, each and all of whom are citizens of the State of Indiana, and says that theretofore, to wit, on the 7th day of April, 1884, the said defendant Arista Glover was duly elected the trustee of Mill Creek township, in the county of Fountain, in the State of Indiana, and thereafter, on the 19th day of April, 1884, duly qualified and entered upon the discharge of his duties as such township trustee, and still so continued until some time in the month of August or September, 1885, when he abandoned his office and fled the country.

That on said 19th day of April, 1884, in connection with his said qualifying as such township trustee, he executed his said
7 bond as such trustee, with the defendants James F. Glover, Kitann Glover, Thomas M. Rinn, and Daniel F. Gumert as sureties thereon, which said bond was duly acknowledged on said day by each and every of said defendants before William Lamb, the auditor of said Fountain county, and said bond was then and there accepted and approved by said auditor and filed in the office of the auditor of said Fountain county, and has ever since so remained on file in said auditor's office, and plaintiff files herewith a copy of said bond, designating the same as Exhibit "A," and says that by the statute in such case made and provided the defendants and each of them incurred all and singular the liabilities provided by the statutes of the State of Indiana for and against sureties upon the bond of township trustees.

Plaintiff further avers that at and prior to the 3rd day of March, 1885, said trustee had no funds whatever in his hands for or on account of the special school fund of said Mill Creek township in excess of the then existing indebtedness of said township for

special school purposes, and that the taxes levied for the year 1884 and to be collected during the year 1885 for special school
8 purposes in said township, including the real, personal, and poll taxes of every kind, character, and description, together with the money then and there on hand, only exceeded the indebtedness then and there existing on account of and for said special school purposes by a very small amount, to wit, in the sum of $100.00, and no more; by reason whereof, under the statutes of the State of Indiana in that behalf enacted, it was obligatory upon said trustee, in case it should become necessary for him to contract or in any case he desired to contract in the name of or on behalf of said school township any debt or debts whatever for said special school purposes to procure an order from the board of commissioners of said Fountain county authorizing him to contract such indebtedness.

And plaintiff avers and charges that the aggregate amount of the indebtedness of said Milk Creek township chargeable to the special school fund being exceeded by the aggregate of the funds then on hand or of the funds to be derived from the taxes levied in the year 1884 and to be collected in the year 1885 to the extent only of $100.00, and such obligation so existing as aforesaid upon said township trustee, said Arista Glover
9 did, in violation of the duties of his office and of the terms and conditions of his bond as aforesaid, execute and deliver to R. P. Pollard, whose Christian name is to the plaintiff unknown, the following named and described promissory notes of said Mill Creek School township, to wit, one note for $772.50, dated May 19th, 1885, and payable on the 20th day of January, 1887; another note for $787.25, dated on the 24th day of April, 1885, and payable on the 20th day of December, 1886; another note for $728.75, dated on the 24th day of April, 1885, and payable on the 20th day of February, 1887; another for $746.66, dated on the 7th day of April and payable on the 20th day of December, 1886; another note for $765.60, dated on the 19th day of May, 1885, and payable on the 20th day of November, 1886; another note for $772.50, dated on the 24th day of April, 1885, and payable on the 20th day of June, 1887; another note for $832.50, dated on the 5th day of May, 1885, and payable on the 20th day of December, 1887, copies of each of which notes, designated respectively as Exhibits "B," "C," "D," "E," "F," "G," & "H," are filed herewith and hereof made a part, each and every of said notes being, ac-
10 cording to their tenor and effect, made payable at the Citizens' Bank of Attica, the same being then and there a bank of discount and deposit within the State of Indiana.

And plaintiff avers that said Arista Glover, as such trustee, did not at or prior to the execution of said promissory notes or either or any of them nor at any other time obtain any order from the board of commissioners of said Fountain county authorizing him to contract any indebtedness for or in the name of said Mill Creek school township, but the execution and delivery of said notes and each and every of them was executed and issued in express viola-

tion of the provisions of sections one and two of the act of the General Assembly of the State of Indiana entitled "An act to limit the powers of township trustees in incurring debts and requiring them to designate certain days for transacting township business," approved March 11th, 1885, the same being sections numbered 6006 and 6007 of the Revised Statutes of the State of Indiana.

Plaintiff avers that thereafter and before the maturity thereof the notes designated as "B," "D," "F," & "H" were by the said Pollard duly endorsed in blank for value received and trans-
11 ferred to the Rhode Island Hospital & Trust Company of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island and a citizen thereof, and in like manner and before maturity, for value received, said notes designated as Exhibits "C" & "E" were by said Pollard duly endorsed in blank and transferred to the Merchants' National Bank of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of Congress and having its place of business in the city of Providence, in the State of Rhode Island, and being a citizen of said State, and in like manner and before maturity, for value received, said note designated as Exhibit "G" was by said Pollard duly endorsed in blank and transferred to the Niantic National Bank of Providence, Rhode Island, a corporation organized and existing under the laws of Congress and having its place of business in the city of Providence, in the State of Rhode Island, and being a citizen of said State.

And afterwards, before maturity, the said Rhode Island Hospital & Trust Company, the Merchants' National bank, and the Niantic National bank transferred and delivered said notes so en-
12 dorsed and delivered to them respectively to this plaintiff, and this plaintiff is now the holder and owner of said notes and each and every of them.

Plaintiff avers that subsequent to the execution of said endorsements, but prior to the institution of this action, said Pollard abandoned his residence and citizenship in the United States of America and fled beyond seas and is now a resident of some foreign country, but of what country plaintiff is unable to aver for the reason that said Pollard keeps his whereabouts concealed. Plaintiff is unable to aver whether said Pollard has acquired a citizenship in a foreign country for the same reason, but avers that he is not now and was not at the commencement of this action either a resident or citizen of the State of Indiana.

Wherefore plaintiff says that the execution of each and every of said notes constituted a breach of said bond, and a cause of action has accrued to it, for the use and benefit of said relator, to have and recover of said defendants and each and every of them the sum of seven thousand dollars and for all proper relief.

13 Par. 2nd. And for a further and second paragraph of complaint plaintiffs say that heretofore, to wit, on the 7th day of April, 1884, the said defendant, Arista Glover, was duly elected the trustee of Mill Creek township, in the county of Fountain, in the State of Indiana, and thereafter, on the 19th day of April, 1884, duly quali-

fied and entered upon the discharge of his duties as such township trustee, and still continued until some time in the month of August or September, 1885, when he abandoned his office and fled the country; that on said 19th day of April, 1884, in connection with his said qualifying as such township trustee, he executed his said bond as such trustee, with the defendants James F. Glover, Kitann Glover, Thomas M. Rinn, and Daniel F. Gumert as sureties thereon, which said bond was duly acknowledged on said day by each and every of said defendants before Wm. Lamb, the auditor of said Fountain county, and said bond was then and there accepted and approved by said auditor and filed in the office of the auditor of said Fountain county, and has ever since so remained on file in said auditor's office, and the plaintiff files herewith a copy of
14 said bond, designating the same as Exhibit "A," and says that by the statute in such case made and provided the defendants and each of them incurred all and singular the obligations and became responsible for all and singular the liabilities provided by the statutes of the State of Indiana for and against sureties upon the bond of township trustees.

Plaintiff further avers that at and prior to the 3d day of March, 1885, said trustee had no funds whatever in his hands for and on account of the special school fund of said Mill Creek township in excess of the then existing indebtedness of said township for special school purposes, and that the taxes levied for the year 1884 and to be collected during the year 1885 for special school purposes in said township, including the real, personal, and poll taxes of every kind, character, and description, together with the money then and there on hand, only exceeded the indebtedness then and there existing on account of and for said special school purposes by a very small amount, to wit, in the sum of $100.00, and no more; by reason whereof, under the statutes of the State of Indiana in that behalf enacted, it was obligatory upon said trustee, in case it became necessary for him to contract or in any case he desired to contract in the name or on behalf of said school township
15 any debt or debts whatever for said special school purposes, to procure an order from the board of commissioners of said Fountain county authorizing him to contract such indebtedness of said Mill Creek township, chargeable to the special school fund, being exceeded by the aggregate of the funds then on hand or of the funds to be derived from the taxes levied in the year 1884 and to be collected in the year 1885 to the extent of only $100.00; and such obligations so existing as aforesaid upon said township trustee, said Arista Glover did, in violation of the duties of his office and of the terms and conditions of his bond aforesaid, purchase and obtain from one R. B. Pollard a large amount of goods for the use of the schools of said Mill Creek township, and in payment therefor did execute and deliver to said R. B. Pollard, whose Christian name is to plaintiff unknown, the following named and described promissory notes of said Mill Creek school township: One note for $772.50, dated May 19th, 1885, and payable on the 20th day of January, 1887; another note for $787.25, dated on the 24th day of April,

1885, and payable on the 20th day of December, 1886; another note for $728.75, dated on the 24th day of April, 1885, and payable on the 20th day of February, 1887; another note for $716.66, dated on the 7th day of April, and payable on the 20th day of De-
16 cember, 1886; another note for $765.60, dated on the 19th day of May, 1885, and payable on the 20th day of November, 1886; another note for $772, dated on the 24th day of April, 1885, and payable on the 20th day of June, 1887; another note for $832.50, dated on the 5th day of May, 1885, and payable on the 20th day of December, 1887, copies of each of which notes, designated respectively as Exhibits "B," "C," "D," "E," "F," "G," & "H," are filed herewith and hereof made a part, each and every of said notes being, according to their tenor and effect, made payable at the Citizens' Bank of Attica, the same being then and there a bank of discount and deposit within the State of Indiana.

And plaintiff avers that said Arista Glover as such trustee did not at or prior to the purchase of said goods or the execution and delivery of said promissory notes or either or any of them, nor at any other time, obtain any order from the board of commissioners of said Fountain county authorizing him to contract any indebtedness for or in the name of said Mill Creek school township, but the purchasing of said goods & the execution and delivery of said notes and each and every of them was made in express violation of the provisions of sections one and two of the act of the General
17 Assembly of the State of Indiana entitled "An act to limit the powers of township trustees in incurring debts and requiring them to designate certain days for transacting township business," approved March 11th, 1875, the same being sections numbered 6006 and 6007 of the Revised Statutes of the State of Indiana.

Plaintiff avers that thereafter and before the maturity thereof the notes designated as "B," "D," "F," & "H" were by the said Pollard duly endorsed in blank for value received and transferred to the Rhode Island Hospital & Trust Company of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island and a citizen thereof; and in like manner and before maturity, for value received, said notes designated as Exhibits "C" & "E" were by Pollard duly endorsed in blank and transferred to the Merchants' National Bank of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of Congress and having its place of business in the city of Providence, in the State of Rhode Island, and being a citizen of said State; and in like manner and before maturity, for value received, said note designated as Exhibit "G" was by said Pollard duly endorsed in blank and transferred to
18 the Niantic National bank, transferred and delivered *to* them respectively to *to* this plaiatiff, and this plaintiff is now the holder and owner of said notes and each and every of them.

Plaintiff avers that subsequent to the execution of said endorsements but prior to the institution of this action said Pollard abandoned his residence and citizenship in the United States of America

and fled beyond the seas and is now a resident of some foreign *county* country, but of what country plaintiff is unable to aver for the reason that the said Pollard keeps his whereabouts concealed. Plaintiff is unable to aver whether said Pollard has acquired a *certain*ship in a foreign country for the same reason, but avers that he is now not and was not at the commencement of this action either a resident or citizen of the State of Indiana.

Wherefore plaintiff says that the execution of each and every of said notes constituted a breach of said bond, and a cause of action has accrued to it for the use and benefit of said relator to have and recover of said defendants and each and every of them the amount of said several notes, and it prays judgment for seven thousand dollars and for all proper relief.

CLAYPOOL & KETCHAM,
Att'ys for s'd Pl'ff.

19 *Trustee's Bond.*

Know all men by these presents that we, Arista Glover, James F. Glover, Kitann Glover, Thomas M. Rinn, and Daniel F. Gumert, all of the county of Fountain and State of Indiana, are held and firmly bound unto the State of Indiana in the penal sum of six thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this 19th day of April, A. D. 1884.

The condition of the above obligation is such that whereas the above-bound Arista Glover was, at the general election held on the first Monday in April, 1884, in Mill Creek township, in said county, duly elected trustee of said town-ship of Mill Creek:

Now, if the said Arista Glover shall well and faithfully discharge the duties of said office according to law; shall faithfully collect and receive all moneys belonging to said township, expend the same as required by law for township, road, school-house purposes, and correctly account to the board of commissioners of Fountain county on the first Monday after the second Tuesday in October and at such other times as required by law, ordered by the board of

20 commissioners of Fountain county, for all receipts and expenditures of township moneys, and shall promptly deliver up to his successor in office all books, papers, and vouchers belonging to said office and pay over to him all moneys on hand belonging to said township, then the above obligation to be null and void; else to remain in full force and virtue in law.

ARISTA GLOVER. [SEAL.]
JAMES FRANKLIN GLOVER. [SEAL.]
her
KITANN x GLOVER. [SEAL.]
mark.
THOMAS M. RINN. [SEAL.]
DANIEL F. GUMERT. [SEAL.]

Accepted and approved by me this 19th day of April, A. D. 1885.

WM. LAMB,
Auditor of Fountain County.

STATE OF INDIANA, } ss:
Fountain County, }

Before me, William Lamb, the auditor in and for said county, this 19th day of April, A. D. 1884, Thomas M. Rinn and Daniel F. Gunnert acknowledged the execution of the annexed bond.

Witness my hand and official seal this 19th day of April, 1884.

WM. LAMB, [SEAL.]
Auditor Fountain County, Ind.

STATE OF INDIANA, } ss:
Fountain County, }

Before me, Allen Grady, a justice of the peace in and for
21 said county, this 18th day of April, 1884, —— —— acknowledged the execution of the annexed bond.

Witness my hand and official seal this 18th day of April, 1884.

ALLEN GRADY, *J. P.* [SEAL.]

STATE OF INDIANA, } ss:
Fountain County, }

I, Arista Glover, swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully, honestly, and impartially discharge the duties of trustee of Mill Creek township, in said county, to the best of my skill and ability.

ARISTA GLOVER.

Subscribed and sworn to before me this 19th day of April, 1884.

WM. LAMB,
Auditor of F. C., Ind.

(Endorsed:) No. 8075. Trustee's bond for Mill Creek township for 1884–5. Arista Glover, trustee. Filed and recorded this 19th day of April, A. D. 1884. Wm. Lamb, auditor.

STATE OF INDIANA, } ss:
Fountain County, }

I, William Lamb, auditor of said county, hereby certify that the attached copy of bond is a full, true, and complete transcript of the original bond of Arista Glover as trustee of Mill Creek
22 township, in said county, now on file in my office.

Witness my hand and official seal this 30th day of November, 1885.

WM. LAMB,
Auditor Fountain County, Ind.

$772.50. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *May 19th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred & seventy-two & $\frac{50}{100}$ dollars for school supplies bought for and received by this township and payable out of the special school funds, for which taxes are now levied, at the Citizens' bank, at Attica, Indiana, on the 20th day of January, 1887, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

$787.25. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *April 24th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred and eighty-seven and $\frac{25}{100}$ dollars for maps, charts, and supplies bought for and received
23 by this township and payable out of the special school funds, for which taxes are now levied, at the Citizens' Bank of Attica, Indiana, on the 20th day of December, 1886, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

$728.75. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *April 24th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred and twenty-eight and $\frac{75}{100}$ dollars for maps, charts, and supplies bought for and received by this township and payable out of the special school funds, for which taxes are now levied, at the Citizens' bank, at Attica, Indiana, on the 20th day of February, 1887, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

$716.66. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
24 MILL CREEK SCHOOL TOWNSHIP, *April 7th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred & sixteen and $\frac{66}{100}$ dollars for charts, maps, and supplies bought for and received by this township and payable out of the special school funds, for which taxes are now

levied, at the Hardy & Gish bank, at Covington, Indiana, on the 20th day of December, 1886, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

$765.60. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *May* 19, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred & sixty-five & $\frac{60}{100}$ dollars for school supplies bought for and received by this township, payable out of the special school funds for which taxes are now levied, at the Citizens' bank, at Attica, Indiana, on the 29th day of November, 1886, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

25 $772.50. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *April 24th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order seven hundred and seventy-two & $\frac{50}{100}$ dollars for maps, charts, & supplies bought for and received by this township and payable out of the special school funds, for which taxes are now levied, at the Citizens' bank, at Attica, Indiana, on the 20th day of June, 1887, with interest at 8 per cent. per annum on the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

$832.50. STATE OF INDIANA, COUNTY OF FOUNTAIN,
TRUSTEE'S OFFICE,
MILL CREEK SCHOOL TOWNSHIP, *May 5th*, 1885.

This is to certify that there is now due from this township to R. B. Pollard or order eight hundred and thirty-two and $\frac{50}{100}$ dollars for school supplies bought for and received by this township and payable out of the special school fund, for which taxes are now levied, at the Citizens' bank, at Attica, Indiana, on the 20th day of December, 1887, with interest at 8 per cent. per annum on
26 the amount from date till paid, and attorneys' fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.

P. O., Yeddo, Ind.

And the defendant Rinn files his separate demurrer thereto as follows:

The defendant Thomas M. Rinn separately demurs to the amended and substituted complaint as amended and assigns as ground of demurrer the following reasons, to wit:

1st. That the court has no jurisdiction of the persons of the defendants nor of the subject of the action.

2d. That neither the first nor the second paragraphs of the amended and substituted complaint as amended states facts sufficient to constitute a cause of action.

McDONALD, BUTLER AND MASON,
Att'ys for Defendant Rinn.

And afterwards, to wit, at said May term of said court, on the 14th day of September, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in said cause were had, to wit:

Come now the defendants Arista Glover, James F. Glover, Kitann Glover, and Daniel F. Gumert, by Paul and Humphreys and T. S. Rollins, their attorneys, and file their demurrer to the amended complaint herein in the words following, to wit:

Come now Arista Glover, James F. Glover, Kitann Glover, and Daniel Gumert and severally demur to the plaintiff's amended complaint for the following grounds of objection, to wit:

27 1st. That the amended complaint does not state facts sufficient to constitute a cause of action.

2d. That this court has no jurisdiction of the subject-matter embraced in the complaint.

PAUL AND HUMPHRIES,
T. S. ROLLINS,
Att'ys for Defendants.

And now comes also the plaintiff, by Mess. Claypool and Ketcham, his attorneys, and comes also the defendant Thomas M. Rinn, by McDonald, Butler and Mason, his attorneys; and thereupon the court, having heard the argument and being sufficiently advised in the premises, doth now sustain the demurrer of the defendant Rinn and the demurrer of the defendants Glover *et al.* to the amended complaint herein; to which ruling of the court the plaintiff, by his attorneys, now excepts; and thereupon the defendants move the court for judgment herein.

It is therefore considered by the court that the plaintiff take nothing by his action herein, and that the defendants recover of the plaintiff their costs herein expended, taxed at $8—.

28 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the 7th judicial circuit and district of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said circuit court, before you, between The State of Indiana on the relation of Walter Stanton,

trustee, and Arista Glover, James F. Glover, Kitaun Glover, Thomas M. Rinn, and Daniel F. Gruenert, a manifest error hath happened, to the great damage of the said Walter Stanton, trustee, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 8th day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and the seal of said circuit court, this 22d day of August, A. D. 1888.

NOBLE C. BUTLER, *Clerk.*

29 United States of America to Arista Glover, James F. Glover, Kitaun Glover, Thomas M. Rinn, and Daniel F. Gruenert, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein The State of Indiana on the relation of Walter Stanton, trustee, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable William A. Woods, judge of the district court of the U. S. for the district of Indiana and *ex officio* judge of said circuit court, this 10th day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

W. A. WOODS.

DISTRICT OF INDIANA, *ss:*

I served this writ by reading same to John M. Butler and Thaddeus S. Rollins and by leaving copies for Alpheus H. Snow and Joseph E. McDonald, attorneys for the within-named parties, Sept. 10, '88.

EDWARD HAWKINS,
U. S. Marshal,
By C. H. STEIN, *Dep'y.*

Service & expenses, $10.06.

30 And afterwards, to wit, at the May term of said court, on the 10th day of September, 1888, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the plaintiff, by Claypool & Ketcham, his attorneys, and files his appeal bond herein in the sum of $300, with Claypool & Ketcham and William A. Ketcham as sureties thereon; which bond is approved by the court and is in the words following, to wit:

Know all men by these presents that we, Walter Stanton, trustee, Claypool & Ketcham, and William A. Ketcham, are held and firmly bound unto the above-named Arista Glover, James F. Glover, Kitann Glover, Thomas M. Rinn, and Daniel F. Greunert, in the sum of three hundred dollars, to be paid to said Arista Glover and others; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators jointly, by these presents.

Sealed with our seals and dated this 8th day of September, 1888.

Whereas the above-named Walter Stanton, trustee, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is that if the above-named Walter Stanton, trustee, shall prosecute his said writ of error to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

Sealed and delivered in presence of—

WALTER STANTON, *Trustee*,
By CLAYPOOL & KETCHAM.
31 CLAYPOOL & KETCHAM. [SEAL.]
WILLIAM A. KETCHAM. [SEAL.]

Taken and approved by me this 10th day of September, 1888.

W. A. WOODS.

32 UNITED STATES OF AMERICA, }
District of Indiana, } *ss.*:

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of The State of Indiana on the relation of Walter Stanton, trustee, *vs.* Arista Glover *et al.*, in said court, as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 10th day of September, A. D. 1888.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk*.

33 UNITED STATES OF AMERICA:

In the Supreme Court, October Term, 1888.

STATE OF INDIANA on Relation of WALTER STANTON
vs.
ARISTA GLOVER, JAMES F. GLOVER, KITANN GLOVER, THOMAS N. RINN, DANIEL F. GUMERT.

The State of Indiana *ex rel.* Walter Stanton, plaintiff in error, complains of the said Arista Glover *et al.*, defendants in error, and says that there is manifest error in the record and proceeding- and judgment of the court below, as follows:

The court erred in sustaining the demurrer of Arista Glover, James F. Glover, Kitann Glover, and Daniel F. Guenert to the amended and substituted complaint of the plaintiff, filed September 3rd, 1886, and the court also erred in sustaining the demurrer of Thomas N. Rinn to the same amended complaint, and the court erred in rendering judgment against plaintiff, that the plaintiff take nothing by his action and pay costs.

Wherefore the plaintiff in error prays that the judgment of the court below be in all things reversed.

SOLOMON CLAYPOOL.
WILLIAM A. KETCHAM.

Endorsed on cover: Case No. 14,410. Indiana C. C. U. S. No. 57. The State of Indiana *ex rel.* Walter Stanton, trustee, plaintiff in error, *vs.* Arista Glover, James F. Glover, Kitaun Glover, Thomas M. Rinn, and Daniel F. Gruenert. Filed November 7, 1890.

Office Supreme Court, U. S.
FILED
OCT 26 1894
JAMES H. McKENNEY,

SUPREME COURT

OF THE

UNITED STATES.

STATE OF INDIANA, EX REL. WALTER STANTON, TRUSTEE,

vs.

ARISTA GLOVER, ET AL.

CASE NO. 14410.

October Term, 1894.

NO. 57.

APPELLANT'S BRIEF.

JERE. M WILSON,
SOLOMON CLAYPOOL, AND
WM. A. KETCHAM,
Attorneys for Appellant.

HANK H. SMITH, INDIANAPOLIS.

SUPREME COURT

OF THE

UNITED STATES.

STATE OF INDIANA, EX REL.
WALTER STANTON, TRUSTEE,

vs.

ARISTA GLOVER, ET AL.

CASE No. 14410.
October Term, 1894.
No. 57.

The appellant, the State of Indiana, on relation of Walter Stanton was plaintiff in an action below against the appellees, Arista Glover, James T. Glover, Kitan Glover, Thomas M. Rinn, and Daniel F. Gumert. The action was on the official bond of Arista Glover, trustee of Mill Creek Township, in the County of Fountain and State of Indiana. The other defendants are sureties upon the bond. A demurrer was sustained to the complaint, and judgment rendered on demurrer in favor of defendants. The plaintiff excepted to the ruling of the Court, and this ruling is the only error here complained of. (See record, p. 15.) The question for decision is whether the complaint stated facts sufficient to constitute a cause of action in favor of the plaintiff against the defendants. The action was for breach of the trustee's bond, whereby the plaintiff claimed he was damaged. A copy of the official bond is made a part of the complaint (record, p. 8), and the first condition

expressed in the bond is that "the said Arista Glover shall well and faithfully discharge the duties of his said office according to law." It is claimed that this condition was broken by a non-compliance of the trustee with the provisions of Sections 1 and 2 of an Act of the Legislature of March 11, 1875, which Sections are the same as Sections 6006 and 6007 of the R. S. of 1881. For convenience we here quote Section 6006:

"When it becomes necessary for the trustee of any township in this State to incur on behalf of his township, any debt or debts whose aggregate amount shall be in excess of the fund on hand to which such debt or debts are chargeable, and of the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred, such trustee shall first procure an order from the Board of County Commissioners of the county in which such township is situated, authorizing him to contract such indebtedness."

Section 6007 directs the proceedings to be had to obtain an order from the Board of County Commissioners.

It will suffice to state, without here repeating the facts averred, that the facts stated in the complaint show that at and prior to April 7th, 1875, until May 19, 1885, and thereafter, such condition existed that under the provisions of said Section 6006, the township trustee had no right to incur any farther debt on behalf of his township without first procuring from the Board of County Commissioners an order authorizing him to contract farther indebtedness. That the facts averred show such a condition, has not been questioned and will not be. Yet as the second paragraph of the complaint avers, "said Arista Glover did in violation of the duties of his office and of the terms and conditions of his bond aforesaid, *purchase and obtain from R. B. Pollard*

a larger amount of goods for the use of the schools of said Mill Creek Township, and in payment therefor did execute and deliver to the said R. B. Pollard the following named and described promissory notes of the said Mill Creek School Township:" here giving a description of the notes dated from April 7th, to May 19th, 1885, for different amounts payable at different dates, there being seven notes aggregating $5,375.76, all of the same form, as follows:

"$716.66. STATE OF INDIANA, COUNTY OF FOUNTAIN.
TRUSTEE'S OFFICE.
Mill Creek School Township, April 7th, 1885.

This is to certify that there is now due from the township to R. B. Pollard or order, seven hundred and sixteen and 66-100 dollars, for charts, maps, and supplies bought for and received by this township and payable out of the special school funds, for which taxes are now levied, at the Hardy & Gish bank, at Covington, Indiana, on the 20th day of December, 1886, with interest at eight per cent. per annum on the amount from date till paid, and attorney's fees.

ARISTA GLOVER,
School Trustee of Mill Creek Township.
P. O., Yeddo, Ind."

(Record, p. 10.)

The complaint further avers that Glover "did not at or prior to the *purchase of said goods or the execution* and delivery of said promissory notes or, either or any of them, nor at any time, obtain any order from the Board of Commissioners of said Fountain County, authorizing him to contract any indebtedness for or in the name of said Mill Creek School Township, but the purchasing of said goods and the execution and delivery of said notes, and each and every one of them, was made in express vioaltion of Sections 6006 and 6007.

Both paragraphs of the complaint were the same, except the first paragraph does not contain the language

above italicised. The second paragraph alleges the consideration of the notes. The first paragraph does not, but copies of the notes are made parts of each paragraph and they, the notes, recite the consideration so that the consideration is shown, (if it is material) but the consideration for the issuing of the notes is not material, for if the notes were issued without consideration, issuing them would be a breach of the bond. If either paragraph of the complaint is good, the action of the Court in sustaining demurrers to both paragraphs, is error. See *Reddsheimer* v. *Miller, et al.*, 107 Ind., p. 485.

It is very clear from the foregoing, that the conduct of Arista Glover was, and is, in direct conflict with the provisions of the aforesaid Sections 6006 and 6007. The first question for decision is whether both the principal and his sureties are answerable upon the official bond for such breach thereof. Each civil township is a school township, and a municipal corporation for school purposes. R. S., Section 4437. The trustee of the civil township is ex-officio trustee of the school township, and his official bond covers his obligations both as civil, and school township trustee. He is required to give bond "conditioned as in ordinary official bonds." Section 5591. The statute on this subject is as follows:

"Section 5528: All official bonds shall be payable to the State of Indiana; and every such bond shall be obligatory to such State upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof."

Section 5534 declares that the sureties in an official

bond "shall as between such sureties and the State, be deemed and taken to be principals, and it shall not be competent for any sureties on such bond to set up as a defense to any action brought for the breach of the condition thereof, any matter which would not be available as a defense to the principle on such bond." From this it is very clear that both the principal and sureties stand upon the same footing as principals: it therefore follows that if Arista Glover (and this will not be denied) is liable on his bond for the above breach, his sureties are also.

In the present case the sureties insist that the principal alone (if any one) is answerable for the breach alleged. To support this position, an Act of March 5th, 1883, (see Acts of 1883, page 114,) is relied upon. This Act declares that if a trustee "shall contract any debt made in the name and behalf of any civil or school township for which he may be trustee contrary to the provisions" of the aforesaid Sections of 6006 and 6007, such trustee "*shall be personally liable and liable on his official bond* to the holder of any contract or other evidence for such indebtedness for the amount thereof." See *Stanton* v. *Shipley*, 27 Fed. Rep., 498. It is insisted that the preceding italicised words were intended to create a personal liability against the trustee and to limit the liability on the official bond to the trustee alone. To so construe the Act in question would, in effect, make the Act amend or modify the provisions of section 5534 and other Sections above cited, which, in effect, declare the general rules to be that the liability of a principal and his sureties in an official bond is, and shall be, the same. The enactment of said Act of March 5, 1883, evidently proceeded upon

an impression that a township trustee (and about this there is room for controversy, to say the least,) would not be personally liable for making a contract in conflict with the provisions of said Sections 6006 and 6007. And it was intended by the Act to prevent such controversy and settle the question of the trustee's personal liability. So construed, there would be wisdom in the Act, but if construed as the appellees claim it should be, the Act would be unwise. If the words, "and liable on his official bond," had been left out of the Act, there would have been, to say the least, very plausible grounds for saying that the Act was only intended to create a personal liability against the trustee. The words just quoted were doubtless used to prevent the possibility of such construction. In the case of *The State ex rel. Cunningham* v. *Helms, et al.*, 35 N. E. Rep., p. 893, this question is ably considered by Dailey, J., and it was decided that in such cases as the present the sureties in the bond are liable. See also, *School Township* v. *Litton*, 116 Ind., 475; *State* v. *Hawes*, 112 Ind., 324.

Papers in the form above shown are the promissory notes of Mill Creek Township, and such as the trustee had power to execute, but as they were payable out of a particular fund they are not commercial paper. *Sheffield Township* v. *Andrews*, 56 Ind., p. 157; *Johnson Township* v. *Citizens Bank*, 81 Ind., p. 515. Whether commercial or non-commercial is immaterial in this case. The material point is that the trustee was vested with power under proper circumstances to execute such notes, and that, therefore, the making and uttering of said notes under the conditions above shown was a breach of his bond. The action in this case is not upon these notes, but upon the official bond by the holder of

the notes who, by the very terms of the aforesaid Act of 1883, has a right to an action on the bond because he is a holder of the notes. Aside from this, Stanton has a right of action because he was damaged by the act of the trustee making and uttering said notes. It is averred in the complaint that before the maturity of the notes they were endorsed in blank for value received and transferred a part to each of three corporations, and that then these corporations, before the maturity of the notes, transferred and delivered the notes to the plaintiff, who was and is the owner of the notes.

The case of *Stanton* v. *Shipley*, 27 Fed. Rep., p. 498, was a case similar to the case now in hand, but the complaint was not the same as the amended complaint in the present case, but the opinion shows the view which Woods, J., took of this character of cases, and with due respect for the opinions of this able judge, we submit that some of the views expressed by him are not tenable. Speaking of the aforesaid Act of 1883 the learned judge says:

"The right of action is given, not upon the paper, but to the holder of it. It would seem to follow from this, and as I understand it has been conceded in argument, that the right of action is transferrable with the paper to successive holders; but I think it clear that an assignee acquires no different or better right, as against the trustee or his bondsmen, than that of the first holder."

The first part of this is correct, but a ruling as to the rights of an assignee according to the last part would be incorrect; against the spirit and purpose of the law. It would put it in the power of Arista Glover, trustee, to issue paper without consideration to R. B. Pollard, to be by the latter sold for whatever he might get; and this without the hazard of any liability against

the trustee or his sureties on the official bond. For when suit might be brought by the purchaser on such paper there could be a plea of no consideration and, therefore, no recovery. We submit that it was intended that persons who might deal with the township trustee, or purchase paper executed by the trustee in the name of his township, should have the right to act upon the belief that the township trustee would do his duty according to law and the terms of his official bond, and to act upon the assurance if the trustee failed to do so, then in such case there would be a right of action on the official bond. There is no reason for applying the rule, that obtains in an action by an indorsee against the maker on non-commercial paper, to an action like the present. Such holding would impair the value of township paper to the detriment of the public, because it is often necessary to issue promises to pay.

As to the question of jurisdiction, the case of *Stanton* v. *Shipley*, 27 Fed. 498, was decided against the plaintiff on the question of want of jurisdiction, upon the ground that the action was upon promissory notes, and the further ground that the citizenship of Pollard, the payee, was not alleged. Neither of these points can be made in the present case, because, as we have shown, the present action is not upon promissory notes, but upon an official bond, and it is alleged that he, Pollard, was not, at the commencement of this action, either a resident or citizen of the State of Indiana.

JERE. M. WILSON,
SOLOMON CLAYPOOL, AND
WM. A. KETCHAM,
Attorneys for Appellant.

Office Supreme Court U. S.
FILED.
OCT 22 1894
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

NO. 14,110.

THE STATE OF INDIANA, EX REL.
WALTER STANTON, TRUSTEE,
Plaintiff in Error,
vs.
ARISTA GLOVER, JAMES F. GLOVER,
THOMAS M. RINN, ET AL.

Brief and Argument for Thomas M. Rinn.

Defendant in Error.

CHARLES B. STUART,
DAN W. SIMMS,
LUCAS NEBEKER,
Attorneys for Thomas M. Rinn.

Supreme Court of the United States.

NO. 14410.

THE STATE OF INDIANA, EX. REL.,
WALTER STANTON,
Plaintiff in Error.

VS.

ARISTA GLOVER, JAMES F. GLOVER,
THOMAS M. RINN, ET AL.,
Defendants in Error.

Brief and Argument for Thomas M. Rinn,

Defendant in Error.

The plaintiff in error complains in this Court, that the circuit court erred in sustaining the demurrer of this defendant in error to the complaint filed by the plaintiff in error, who is also plaintiff in the court below, and in rendering judgment against him. This action of the Court appears on page 27 of the record, which is page 12 of the printed record. The only question therefore, which is raised in this Court, relates to the sufficiency of said complaint. The complaint in question is styled "Amended and Substituted Complaint," and is set out on pages 6

to 19 of the record, being pages 3 to 8 of the printed record. Certain exhibits were filed with the complaint, and were set out in the record immediately following the complaint.

An examination of the complaint in question will show, that both paragraphs thereof, seek to recover upon the same cause or causes of action.

The cause of action relied on, so far as the defendant in error, Thomas M. Rinn, is concerned, is based upon the official bond of Arista Glover, as trustee of Mill Creek Township, Fountain County, Indiana, upon which bond said Rinn was one of the sureties. As a breach of this bond, it is alleged in the first paragraph of said complaint, "Said Arista Glover did, in violation of the duties of his office and of the terms and conditions of his bond aforesaid, execute and deliver to R. P. Pollard, whose Christian name is to the plaintiff unknown, the following named and described promissory notes of said Mill Creek Township, to-wit :" (Then follows a description of seven notes or warrants, which are made exhibits "B" to "H.") Said alleged breach of said bond is stated in the second paragraph, in the following language: "Said Arista Glover did, in violation of the duties of his office, and of the terms and conditions of his bond aforesaid, purchase and

obtain from one R. B. Pollard, a large amount of goods, for the use of the schools of said Mill Creek Township, and in payment thereof, did execute and deliver to said R. B. Pollard, whose christian name is to the plaintiff unknown, the following named and described promissory notes of said Mill Creek Township:" Then follows a description of the same notes referred to in the first paragraph.

It is claimed by the plaintiff in error, that the acts above set forth on the part of the Township Trustee, Arista Glover, constituted a breach of the bond of said officer, by reason of certain laws theretofore enacted and at that time in force, in the State of Indiana.

Section 6006 of the Statute of Indiana, Revision of 1881, being Section 8081 of the Revision of 1894, provides: "Whenever it becomes necessary for the trustee of any township in this State to incur, on behalf of his township, any debt or debts, whose aggregate amount shall be in excess of the fund on hand, to which such debt or debts are chargeable, and of the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred, such trustee shall first procure an order from the Board of County Commissioners of the county in which such township is sit-

nated, authorizing him to contract such indebtedness."

The next following section provides for the manner in which such order of the Board of Commissioners shall be obtained by the trustee, and requires such trustee to file a petition, together with an affidavit of notice of such petition, by posting notices in not less than five public places in his township, at least twenty days prior to the session of the Board, at which said hearing is to take place.

Afterwards, the Legislature of Indiana passed an act which was approved March 5th, 1883, entitled "An act touching the duties of township trustees, with reference to liquidating and contracting indebtedness of townships, in certain cases." The second section of said act, reads as follows: "And it is further provided, that any township trustee, in any county of the State of Indiana, who shall contract any debt in the name or in behalf of any Civil or school township, of which he may be the trustee, contrary to the provisions of section One and Two of 'An act to limit the powers of township trustees in incurring debts, and requiring him to designate certain days for transacting township business,' approved March 11th, 1875, (the same being the two sections of the statute above referred to,) shall be

personally liable, and liable on his official bond, to the holder of any contract, or other evidence of such indebtedness, for the amount thereof.

See, Acts of 1883, page 114.

Although this act last above set out, was repealed on March 9th, 1889, (see acts of 1889, page 278) it was in force both at the date of the execution of the bond sued on and at the date of the alleged breach thereof.

The claim of the plaintiff in error, as against the defendant, Thomas M. Rinn, is based upon said act of 1883, and the serious question arising in this case, is whether such liability of said surety on said bond, has been made out by the allegations of the complaint. Both paragraphs of the complaint allege successive endorsements from the payee, R. B. Pollard, to the plaintiff in error. We concede that these instruments, described in the complaint, were negotiable in the sense that the title to them was transferred by said endorsement to the plaintiff in error, but we deny that the plaintiff in error stands in any better position or that his right to recover is any greater than that of the original payee.

First. For the reason that neither the trustee nor the school corporation has any general power to execute notes, or other obligations to pay money,

and that the doctrines relating to commercial paper, have no relation to obligations issued by a corporation possessing limited power, of a local and non-commercial character. We shall hereafter show, that under the laws of the State of Indiana, creating such a corporation, and relating to its functions and powers, it is a corporation of exceedingly limited power, that it has no general power to execute notes, that it has no power to incur obligations, except under certain conditions, and that the trustee of such corporation can only execute an obligation when such power is specially conferred upon him by the existence of certain conditions. This Court has, we think, settled this proposition, beyond all question, with reference to obligations issued by all such corporations, and we refer to the following cases decided by this Court :

Mayor, &c. vs. Ray, 19 Wallace, 468.

Wall vs. Monroe County, 103 U. S., page 74.

Police Jury vs. Britton, 15 Wallace, 566.

Claiborn County vs. Brooks, 111 U. S. page 407.

Second. These instruments are not governed by the law merchant, for another reason. They are dated and made payable in the State of Indiana. They are in all respects Indiana contracts, and are therefore governed, so far as their commercial qual-

ity is concerned, by the laws of Indiana. The statutes of Indiana have, for many years contained provisions as to what notes or other instruments, shall have the character of commercial paper.

See Statutes of 1881, Section 5506.

Statutes of 1894, Section 7520.

By reference to said exhibits, it will be seen that they are all limited as to their payment to the special school funds, for which taxes are now levied. Numerous decisions by the Supreme Court of Indiana, might be cited to the effect that any provision similar to those, contained in any note or obligation, destroys its character as negotiable paper, and makes the same non-negotiable. We need only cite however, two cases in Indiana, which expressly hold the doctrine we have stated, as applied to obligations made by township trustees, containing this kind of a provision.

Sheffield Township vs. Andress, 56 Indiana, 157.

States vs. Hawes, 112 Indiana, 323.

We presume that it will not be denied that in the construction of the statutes of the State, the decisions of the Supreme Court of that State, is treated by this Court, as controlling.

Elmendorf vs. Taylor, 10 Wheaton, 152.

Cathcart vs. Robinson, 5 Peters, 264.

Green vs. Neal, 6 Peters, 291.

Amis vs. Smith, 16 Peters, 303.

If we are correct in the foregoing propositions, this case stands on the same footing as if this suit were brought by the original payee, R. B. Pollard.

In determining the question as to the sufficiency of the complaint in this case, we think we may safely state the following proposition: that in order to make out any liability as against the surety, upon the school trustee's official bond, it must be shown by the complaint, first,—that the township trustee contracted a debt within the meaning of the act above quoted of 1883, acts of 1883, page 114, and second,—that he did so, in violation of the provisions of sections 6006 and 6007 of the statutes of 1881. This proposition is necessarily true and correct, for the reason that such is the plain terms and conditions of such liability prescribed by the above act, and for the reason that but for said act, there would not exist any such liability. Neither the express terms of the bond sued on nor any statute of Indiana, other than the one above quoted, attempts to create any such liability. We shall hereafter discuss the question as to whether the complaint shows that any debt was contracted within the meaning of said act, but assuming for the present, for the

sake of argument, that the creation of the debt has been properly alleged, the question still remains as to whether it is such a debt as is in violation of said sections 6006 and 6007 of the statutes of 1881.

The first paragraph of complaint fails altogether, to show what the notes therein described, were given for. The second paragraph alleges that the consideration of the notes was "A large amount of goods for the use of the schools of said Mill Creek Township." But there is no statement any where in the body of the complaint as to the particular nature or character of such goods. It is true that the seven notes or warrants which have been made exhibits to the complaint contain some further recital as to the kind of goods for which they were given, but it is to be remembered that this suit is not based upon the notes or warrants, and that they have no connection with this suit, except as evidence tending to show the liability of the sureties on the official bond. The basis and foundation of the suit is the bond, and for that reason, we contend that the said notes and warrants are not properly exhibits to the complaint, and that they therefore do not furnish any aid to the complaint, nor do they supply any fact nor therein averred. Such, at least, is the doctrine established in the Indiana State Courts, as held

by many decisions of the Supreme Court of that State.

We would call the attention of this Court to the case of State ex rel Cunningham vs. Helms, decided by the Supreme Court of Indiana, and reported in 35 Northeastern Reporter, page 893. That case was similar to this, being a suit upon a bond of a township trustee, and this exact question was decided.

The Court says, on page 894, (second column,) "The first inquiry to be considered in this investigation, is whether the township trustee, Helms, contracted any debt in the name of or on behalf of his township, and of which he was the trustee." Then follows certain allegations of the complaint. The court then says: "It is true the note is exhibited with each paragraph of the complaint, but the action is upon the official bond of the township trustee, and not upon the note. The note not being the foundation of the action, it can neither add to nor take from the pleading. When a complaint is not predicated on the exhibit, the latter can not be looked to, to supply an omitted averment or to otherwise aid the complaint. In such cases, it can not be made part of the pleading. To withstand a demurrer, the pleading must be good within itself, without refer-

ence to the writing." The complaint in that case was held good for the reason that the consideration of the notes was fully stated and set forth in detail, and the fact that the debt was contracted and that it was in violation of said sections 6006 and 6907, was fully made to appear by the allegations contained in the body of the complaint.

According to this rule of pleading therefore, the complaint merely shows the purchase by Arista Glover, of a large amount of goods, for the use of the schools of Mill Creek Township, and it is impossible to know, from the body of the complaint, whether or not the goods were of such a character that the trustee might not purchase them on credit, without filing a petition to the Board of Commissioners. If, however, the recitals of the notes or warrants are admitted, for the purpose of aiding the complaint, they do not furnish any material aid. The recitals contained in this instrument, are "School supplies bought for and received by this township;" "for maps, charts, and supplies, bought for and received by this township;" "Charts, maps, and supplies, bought for and received by this township." These are the only particulars that are furnished by the recitals of the instruments, and it is still impossible to know whether the purchase of

the goods by the trustee, from R. B. Pollard, was or was not, within the prohibition of sections 6006 and 6007. The construction which said prohibitory sections have received by the Supreme Court of Indiana, is that the trustee may not incur a debt for the building of a school house, nor for school furniture or apparatus, in excess of the fund on hand and the taxes levied for the current year, as decided by the case of Jeffersonville School township vs. Litton, 116 Indiana, page 467. Middleton vs. Gleason 106 Indiana, page 18.

On the other hand, it has been equally well settled that the trustee of a school corporation may contract a debt which is binding upon such corporation, in the purchase of such articles, supplies, apparatus and furniture, as are necessary to carry out the objects of the corporation, without making any application to the Board of County Commissioners, as provided by sections 6006 and 6007.

This point is decided by the case of Miller vs. White River School Township, 101 Ind. 503, in which the sufficiency of an answer to a complaint on a township warrant was in question. It alleged that the contract for certain maps or tellurians mentioned in the complaint, was void, because within the prohibition of said sections of the statute, and

the Court says, on page 510, "We are of the opinion, however, that the fourth paragraph of answer states no defense, whatever, to the appellant's action. It is manifest that the paragraph was prepared upon the supposition of the pleader that the contract for the tellurians mentioned in the complaint, was void because appellee's trustee had not complied with the provisions of sections 6006 and 6007 of the Revised Statutes of 1881, in making such contract."

"We think however, that these sections of the statute can have no application to the ordinary debts incurred by the trustee for furniture, apparatus and other supplies, for the schools of his township, such as the debt in suit for the tellurians."

Whatever uncertainty there may be as to what particular kinds of supplies may be purchased by the township trustee, without violating said prohibitory sections, there can be no question that it is the settled law of Indiana, that the purchase of school supplies, apparatus and furniture, may or may not be within the prohibition of sections 6006 and 6007.

Our contention therefore is that it devolves upon the pleader, to affirmatively show by his pleading, by proper averments that the debt that was contracted, if any was contracted, was for such ar-

ticles as made the debt fall within the prohibitory sections of the statute, and that this complaint fails to contain such affirmative averment, and it is for that reason, insufficient.

The most material defect in the complaint and the principal objection to its sufficiency as against this defendant in error, consists in the failure to show that any debt was contracted within the meaning of the act of 1883. The provisions of this act are invoked by the plaintiff in error, against one who is a surety merely. He is no party to any contract entered into between the township trustee, Arista Glover, and the payee, R. B. Pollard, and we submit whether, in a suit against one occupying this relation, it should not be distinctly averred in the complaint, that a debt was created which, but for the said statutory prohibition, would have been a valid debt against the township. It would be a great hardship upon this defendant in error, if a recovery should be had against him merely because the official for whom he became surety, executed the seven instruments described in the complaint. The execution of those instruments was a transaction in which he is not supposed to have participated, and the hardship of requiring him to defend himself against a complaint like this and to show affirma-

tively that the instruments described in the complaint did not represent any debt is well illustrated by the fact which is alleged in both paragraphs of the complaint, that the trustee, in 1885, abandoned his office and fled the country, and that the said Pollard, after endorsing said instruments, fled beyond seas, and is now a resident of some foreign country, unknown to the plaintiff and that he keeps his whereabouts concealed.

It will not be claimed by plaintiff in error that this defendant in error is liable for the payment of any fraudulant warrants or other obligations, nor that he is liable for the payment of any warrants, which it was not within his authority to execute. The act of 1883 has already received a construction at the hands of the Supreme Court of Indiana.

In the case of the State ex rel Cohen vs. Hawes, 112 Indiana, 323, a suit was brought on the official bond of the township trustee, upon a certificate made to R. B. Pollard, purporting to be for school supplies bought and received by the township, and that the same was executed in violation of the Revised Statute of 1881. A certificate in that case had in fact been issued without any real consideration.

The Supreme Court say, on page 325, "All liability imposed by the act of 1883, requires as a condition

precedent, that the township trustee must have contracted a debt in the name or in behalf of his township, either civil or school, and the debt must have been contracted in violation of the provisions of sections 6006 and 6007. If therefore, the transaction in which the certificate had its inception, was such as to create no debt, or if the debt created was not within the prohibition of the above mentioned sections, manifestly, the statutory liability has not been incurred, by any one." The court then waives the question whether said prohibitory sections apply to ordinary debts incurred by trustees, for furniture, &c., and proceeds to give a definition of the word "debt." And the Court further says, on page 326, "The mere delivery of a piece of paper, which imports an obligation to pay money, but which is in fact, no evidence of an actual existing debt, does not constitute the contracting of a debt. It can not be supposed that it was the purpose of the statute to enable a holder of a contract or other evidence of indebtedness issued by a township trustee, in the name or in behalf of his township, to hold the trustee personally liable, and liable on his official bond, whether the indebtedness had been in fact, contracted, or not. A recovery in any case is limited by the statute, by the amount of the indebtedness, and not by the amount stipulated in the contract. Hence, given a case in which there is no indebtedness, that is, no one who occupies the situation of a creditor, and there can be no recovery under the statute."

"Where therefore, as in the case here, paper purporting to be the obligation of a township, has been issued without any consideration whatever, nothing having been given or received therefor, the holder of such paper, whether he be the payee therein or an assignee, has no right of action under the act of 1883, because the trustee has not in any legal or equitable sense, contracted a debt. Such paper creates no obligation against any one. It is void. Since township trustees can issue obligations, binding on the township, only in case a debt has been contracted, and since, in any event, paper issued as an evidence of an actual indebtedness already incurred by a municipal corporation, which possesses only limited powers, conferred for special and local purposes of a purely non-commercial character, is not negotiable, according to the law merchant, a subsequent holder of paper issued by the township trustee, can occupy no better ground than that occupied by the person to whom it was issued. The certificate having been issued in the name and in behalf of the township, without power or authority, and not as evidence of any debt contracted by the trustee, it was absolutely void in the hands of the original payee, both as respects a trustee personally and the township, and being for that reason, void in his hands, it was equally invalid in the hands of any subsequent holder."

The Court further says at the close of the opinion, that it seems probable that it was the intention of the legislature of Indiana to afford redress to

those who might become holders of contracts issued by the trustee to persons who, in good faith, parted with money and property, in pursuance of a contract made by the trustee, contrary to the provisions of sections 6006 and 6007, upon which, but for said sections, the township would have been liable.

The same doctrine is held in the case of Grimsley vs. State ex rel, 116 Indiana, page 130.

We have thus quoted copiously, for the purpose of showing what construction has been placed upon the act of 1883, by the Supreme Court of Indiana. We think that the authorities above cited and quoted from, clearly establish the proposition that the plaintiff in error can recover only as R. B. Pollard became a creditor of Mill Creek Township, and that plaintiff must allege at least as strong a case as he would be required to allege if his suit was against a township, upon the same warrants.

What is said in the above quoted decision as to the probable intention of the legislature, is clearly correct. The evident object was to affect contracts which would have been valid contracts, and to make such contracts invalid. It was clearly not the intention to make contracts invalid, which were already invalid and which needed no legislation to make them so. We therefore say that the plaintiff

in a case like this, can only recover where a debt was contracted which would have been valid, but was rendered invalid by said act of 1875.

This test of the sufficiency of the complaint of the plaintiff in error is surely as liberal a one to him, as his counsel can contend for. The arguments heretofore adduced, go to show that a much stronger test is required as against this defendant in error.

It ought therefore certainly to be conceded that if the complaint in question, without the allegations as to the violation of said prohibitory sections, would be insufficient in a suit against a township, it is also insufficient in a suit against the surety upon the township trustee's bond.

We submit therefore, the question whether in any suit brought in any form, upon an instrument like this, purporting to create a liability on the part of a mere school corporation, it must not be alleged in some form, that the act was within the powers of the corporation, and that the act of the trustee was in some manner, authorized.

The first paragraph of the complaint simply alleges the execution of the warrants by the trustee. In the second paragraph of the complaint, it is alleged that Arista Glover did purchase and obtain from Pollard, a large amount of goods for the use

of the schools of said Mill Creek Township. If the complaint is good in respect to the point which we now make, it is made so by this last allegation. The complaint nowhere contains any allegation other than this, as to the authority of Arista Glover, who was the trustee. It does not even allege that the township became indebted to R. B. Pollard or to any other person. It does not allege that the goods obtained by Glover from Pollard, were of any particular value. It does not allege that any such goods were received or accepted by Mill Creek Township or that the same were used in the schools of said township, nor does it allege whether or not the goods were suitable and necessary for the use of said township or its schools. The complaint does not even indicate that a debt would have been created but for said sections 6006 and 6007. On the contrary, it makes the general and sweeping averment that the warrants were issued by Glover in violation of the duties of his office and of the terms and conditions of his bond aforesaid, and that the purchase by him was in such violation. The breach of the bond at the close of the complaint, is said to be the execution of said notes, and not otherwise. The invalidity of the whole contract and of all that the trustee did, is thus alleged in a general way, and

is not confined to, nor necessarily based upon, the trustee's failure to procure an order from the Board of Commissioners. The theory of the pleader as indicated by his averments, and by the conclusion of his complaint, is that the plaintiff is entitled to recover, regardless of the validity or invalidity of the warrants, so far as the authority of the trustee is concerned. Our position is that in order to make a good complaint, it must be shown that the goods which were the subject matter of the contract, were such goods as the trustee and the corporation had the power to purchase, and that the instruments sued on were based upon an antecedent implied liability on the part of the township, and that the right to enforce the contract is simply cut off by the statute heretofore cited.

This proposition involves the question as to what the trustee's powers are, under the statutes of Indiana, and upon that question, we shall refer the court to a few of the numerous decisions of that Court upon that question.

In the case of Wallis vs. Johnson School Township, 75 Indiana, 368, the Statute of Indiana creating school corporations and defining and limiting the powers of such corporations and their trustees, are well considered, discussed and stated, and we

refer this Court to that case, for an able exposition of the subjects therein discussed.

In the case of Union School Township vs. 1st National Bank, 102 Indiana, page 464, suit had been brought upon a township certificate or note, and on page 470 the Court says "The trustee, in the management of the official affairs of the schools and township, is a special agent, with limited statutory powers. He has no general authority to bind the corporation. His acts create a binding obligation against the school township, only when he does the acts which the law authorizes, and does them in the manner which the law prescribes. All who deal with him are bound to take notice of the scope of his authority."

On page 474, the Court further says "The corporation is itself organized for a limited and local purpose. It is not a corporation with general powers. It has neither a general power to contract debts nor to buy property. Its power is to conduct the local school affairs, and to do this, with the money derived from the revenues set apart for school purposes. There is, in strictness, no power in the corporation to expend moneys derived from any other source than the school revenues. Thus is the power of the corporation itself, circumscribed. It is perfectly obvious therefore, that one who deals with a school trustee, must, at his peril, ascertain that the trustee is acting within his authority. It is incumbent upon a person seeking to hold the corporation liable for a debt created by a trustee, in the name

of the corporation, to affirmatively show that it was one he had authority to incur."

In the case of Bloomington School Township vs. National School Furniture Company, 107 Indiana, page 43, the Court discusses the limited powers of a school trustee, and holds that in order to show that the trustee was acting within his limited powers, the plaintiff must aver in his complaint, that the school supplies were necessary and suitable for the use of the public schools. Also, that they had been delivered to and accepted by the township.

In the case of Reeve School Township vs. Dodson, 98 Indiana, page 497, the complaint was against a school township on a note reciting that it was given for eleven G. McBride's tellurians, purchased for the benefit of said township, and the Court held the complaint bad for the reason that it did not aver that the articles were suitable and necessary for the schools of said township, nor that they had been received or used by such township, and that the note described in the complaint was not sufficient to entitle the plaintiff to recover without these other allegations showing authority to execute it. And the Court further holds that any liability on the part of the corporation, is upon an implied contract and not upon the note.

In the case of Litton vs. Wright School Township, 127 Indiana, page 81, it is held that a note or other obligation, executed by a trustee, does not bind a corporation, for such corporation is only bound where the school supplies are actually furnished.

In the case of Boyd vs. Mill Creek School Township, 114 Indiana, page 210, it is held that before a note given for school supplies can be recovered upon, it must be shown that the supplies were suitable and necessary in the sense of being needed for the use of the schools.

In the case of Honey Creek Township vs. Barnes, 119 Indiana, page 213, a complaint upon a township warrant or note was held bad because it did not allege that the supplies for which the warrant was alleged to have been given, were such that the trustee had the power to buy them.

We could cite other cases in support of our contention, but we deem these sufficient to show the construction placed by the Supreme Court of Indiana, upon the various statutes, concerning school trustees and school corporations. If these decisions are correct, and if they are accepted by this Court, as authority upon the questions decided, they are decisive of this case.

The allegation that the notes or warrants sued on were given for goods and supplies, and that such goods were suitable and necessary for the schools of the township, and that they were received and accepted by the township, was held to be necessary in order to show that the debt had been contracted. As heretofore argued, and as decided by the Supreme Court of Indiana, it is equally necessary, in a suit like this, for the complaint to affirmatively show that a debt had been contracted. Therefore, the same allegations would be necessary to make the complaint in this case good. There is no allegation in this complaint, that the goods described in the complaint were suitable and necessary for the schools of Mill Creek Township.

The failure to so allege, makes the complaint bad. There is not even an allegation that the goods were received and accepted by the township. It is alleged that said Arista Glover did purchase and obtain, &c., but is not alleged that the township received, nor that the township, in any way derived any benefit from the alleged purchase, by Arista Glover. It is not even alleged that the township contracted, nor that the township, through its agent, or otherwise, executed the notes described.

All the matters heretofore discussed are neces-

sary to be alleged, to make the complaint good. None of them are contained in either paragraph of complaint. The existence of the power to purchase goods, and to execute certificates, showing such fact, is left altogether to such inferences as may be drawn from the fact that Arista Glover was the school trustee of the school township.

If the question were an open one we might well argue that the acts of 1883 do not attempt to make any one liable, except the trustee himself. The language of the act is "That any township trustee shall be personally liable, and liable upon his official bond." As heretofore shown, the Supreme Court of Indiana indicated some doubt whether that language included the bondsmen.

In the case of Stanton vs. Shipley, 27 Fed. Rep. page 499, Judge Woods said "By the rule of strict construction, I should be inclined to hold that liability in such cases, does not attach to sureties on such bond, at all."

We are inclined to agree with the opinion expressed by the learned Judge, but we are compelled to admit, that the Supreme Court of Indiana seems to construe said language as including sureties as well as the trustee.

Since the preparation of the foregoing, we have learned that counsel for other defendants in error

in this case, have filed a brief on behalf of all the defendants in error, including our client, and pursuant to the consent already given by him.

We therefore ask the Court to treat this brief as a supplemental and additional brief, especially for and on behalf of Thomas M. Rinn, and we submit the case, as to our said client, without other or further argument.

CHARLES B. STUART.
DAN W. SIMMS.
LUCAS NEBEKER.
Attorneys for Thomas M. Rinn, Defendant in Error.

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No. 316

—IN THE—

Supreme Court

—OF THE—

UNITED · STATES.

State of Indiana, ex rel Walter B. Stanton vs. Arista Glover et als.

Appellee's Brief.

W. W. DUDLEY,
AND
L. T. MICHENER,
Attorneys for Appellees.

WASHINGTON, IND.
McCAFFERTY BROS., Printers.

IN UNITED STATES SUPREME COURT.

State of Indiana, on the Relation of Walter Stanton.

Versus,

Arista Glover, et al.

This was an action brought by the Plaintiff against Appellees herein, as principal and sureties upon the Official Bond of Arista Glover as Trustee of Mill Creek Township, Fountain County in the State of Indiana.

In order to save a reference to other papers than this brief, we copy at length the complaint in this cause, except the exhibits.

United States of America / District of Indiana. / S. S.

In the Circuit Court of the United States, within and for the District of Indiana.
May Term, 1886.
No. 8075.
Amended and substituted complaint.

"The State of Indiana on the relation of Walter Stanton, who is trustee of an express trust, and who is a citizen of the State of New York, by way of an amended and substituted complaint, by leave of Court first and had obtained, complains of the Defendants, Arista Glover, James F. Glover, Kitann Glover, Thomas M. Rinn and Daniel F. Gumert, each and all of whom are citizens of the State of Indiana, and says, that heretofore, to-wit: On the 7th day of April, 1884, the said Defendant, Arista Glover, was duly elected the Trustee of Mill Creek Township, in the County of Fountain, in the State of Indiana, and thereafter, on the 19th day of April, 1884, duly qualified and entered upon the discharge of his duties as such Township Trustee, and still so continued until some time in the month of August or September, 1885, when he abandoned his office and fled the country. That on said 19th day of April, 1884, in connection with his said qualifying as such Township Trustee, he executed his said bond, as such trustee, with defendants, James F. Glover, Kitann Glover, Thomas M. Rinn and Daniel F. Gumert as sureties thereon, which said bond was duly acknowledged on said day by each and every of said defendants before Wm. Lamb, the Auditor of said Fountain County; and said bond was then and there accepted and approved by said Auditor, and filed in the office of the Auditor of said Fountain County, and has ever since so remained on file in said Auditor's office; and plaintiff files herewith a copy of said bond, designating the same as Exhibit "A." and says that by the Statute in such cases made and provided, the defendants and each of them, incurred, all and singular, the obligations, and became responsible for, all and singular, the liabilities provided in the Statutes of the State of Indiana, for and against sureties upon the bond of Township Trustees.

Plaintiff further avers, that at and prior to the 3rd day of March, 1885, said Trustee had no funds whatever in his hand, for and on account of the Special School Fund of said Mill Creek Township, in the excess of the then existing indebtedness of said Township for special school purposes; and that the taxes levied for the year 1884, and to be collected during the year 1885 for special school purposes in said Township, including the real, personal and poll taxes of every kind, character and description, together with the money then and there on hand, only exceeding the indebtedness then and there existing on account of and for said special school purposes, by a very small amount, to-wit: In the sum of $100.00 and no more, by reason whereof, under the statutes of the State of Indiana, in that behalf enacted, it was obligatory upon said trustee, in case it should become necessary for him to contract, or in any case he desired to contract, in the name, or on behalf, of said school township, any debt or debts whatever for said special school purposes, to procure an order from the Board of Commissioners, of said Fountain County, authorizing him to contract such indebtedness.

And plaintiff avers and charges, that the aggregate amount of the indebtedness of said Mill Creek Township, chargeable to the special school fund, being exceeded by the aggregate of the funds then on hand, or of the funds to be derived from the taxes levied in the year 1884, and to be collected in the year 1885, to the extent only of $100.00, and such obligation so existing, as aforesaid upon said Township Trustee, said Arista Glover, did in violation of the duties of his office, and of the terms and conditions of his bond, as aforesaid, execute and deliver to R. B. Pollard, whose Christain name is to plaintiff unknown, the following named and described promissory notes of said Mill Creek School Township, to-wit: One note for $772.50, dated May 19th, 1885, and payable on the 20th day of January, 1887; another note for $787.25, dated on the 24th day of April, 1885, and payable on the 20th day of December, 1886; another note for $728.75, dated on the 24th day of April, 1885, and payable on the 20th day of February, 1887; another note for $717.66, dated on the 7th day of April and payable on the 20th day of December, 1886; another note for $765.60, dated on the 19th day of May, 1885, and payable on the 20th day of November, 1886; another note for $772.50, dated on the 24th day of April, 1885, and payable on the 20th day of June, 1887; another note for $832.50, dated on the 5th day of May, 1885, and payable on the 20th day of December 1887; copies of each of which notes, designated, respectfully, as exhibits "B", "C", "D", "E", "F", "G" and "H", are filed herewith and hereof made a part, each and every of said notes being, according to their tenor and effect, made payable at the Citizens Bank of Attica, the same being then and there a Bank of discount and deposit, within the State of Indiana.

And plaintiff avers, that said Arista Glover; as such trustee, did not at or prior the execution of said promissory notes, or either or any of them, nor at any other time, obtain any order from the Board of Commissioners of said Fountain County authorizing him to contract any indebtedness, for or in the name of said Washington School Township; but the execution and delivery of

said notes, and each and every of them was executed and issued in express violation of the provisions of the Sections one and two of the Acts of the General Assembly of the State of Indiana, entitled "An Act to limit the power of Township Trustees in incurring debts and requiring them to designate certain days for transacting Township business," approved March 11th, 1875, the same being sections numbered 6006 and 6007, of the Revised Statutes of the State of Indiana.

Plaintiff avers, that thereafter and before the maturity thereof, the notes, designated as "B", "D", "F" and "H", were by the said Pollard duly endorsed in blank for value received, and transferred to the Rhode Island, Hospital & Trust Company of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, and a citizen thereof; and in like manner and before maturity, for value received, said notes designated as exhibits "C" and "E", were by said Pollard duly endorsed in blank, and transferred to the Merchants National Bank of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of Congress, and having its place of business in the City of Providence, in the State of Rhode Island, and being a citizen of said State. And afterwards, before maturity, the Rhode Island Hospital & Trust Company, the Merchants National Bank, and the Niantic National Bank, transferred and delivered said notes, so endorsed, and delivered to them, respectfully to this plaintiff, and this plaintiff is now the holder and owner of said notes, and each and every of them.

Plaintiff avers, that subsequent to the execution of said endorsements, but prior to the institution of this action, said Pollard abandoned his residence and citizenship in the United States of America, and fled beyond seas, and is now a resident of some foreign country, but of what country plaintiff is unable to aver, for the reason that said Pollard keeps his whereabouts concealed; plaintiff is unable to aver whether said Pollard has acquired a citizenship in a foreign country for the same reason, but avers that he is not now, and was not at the commencement of this action, either a resident or citizen of the State of Indiana.

Wherefore, plaintiff says that the execution of each and every of said notes constituted a breach of said bond, and a cause of action has accrued to it, for the use and benefit of said relator, to have and to recover of said defendants and each and every of them the sum of Seven Thousand Dollars, and for all proper relief.

Par. 2nd: And, for a further and second paragraph of complaint, plaintiff says, that heretofore, to-wit: on the 7th day of April, 1884, the said defendant, Arista Glover, was duly elected the Trustee of Mill Creek Township, in the County of Fountain, and State of Indiana, and, thereafter, on the 19th, day of April, 1884, duly qualified and entered upon the discharge of his duties as such Township Trustee, and still so continued until some time in the month of August or September, 1885, when he abondoned his office and fled the country; that on said 19th day of April, 1884, in connection with his said qualifying as such Township Trustee, he executed his said bond, as such trustee, with the defendants, James F. Glover, Kitann Glover, Thomas M. Rinn and Daniel F.

Gumert, as sureties thereon, which said bond was duly acknowledged on said day by each and everyone of said defendants before Wm. Lamb, the Auditor of said Fountain County, and said bond was then and there accepted and approved by said Auditor, and filed in the office of the Auditor of said Fountain County, and has ever since so remained on file in said Auditor's office, and plaintiff files herewith a copy of said bond, designating the same as exhibit "A," and says that by the Statute, in such cases made and provided, the defendants and each of them incurred, all and singular, the liabilities provided by the Statutes of the State of Indiana, for and against sureties upon the bond of Township Trustees.

Plaintiff further avers that at and prior to the 3d day of March, 1885, said Trustee had no funds whatever in his hands, for and on account of the Special School Fund of said Mill Creek Township, in excess of the then existing indebtedness of said township for special school purposes; and that the taxes levied for the year 1884, and to be collected during the year 1885, for special school purposes in said Township, including the real, personal and poll taxes of every kind, character and description, together with the money then and there on hand, only exceeded the indebtedness, then and there existing on account of and for said special school purposes, by a very small amount, to-wit: in the sum of $100.00, and no more, by reason hereof, under the Statutes of the State of Indiana, in that behalf enacted, it was obligatory upon said trustee, in case it became necessary for him to contract, or in case he desired to contract in the name or on behalf of said school township, any debt or debts whatever for said special school purposes, to procure an order from the Board of Commissioners, of said Fountain County, authorizing him to contract such indebtedness.

And plaintiff avers and charges, that the aggregate amount of the indebtedness of said Mill Creek Township, chargeable to the Special School Fund, being exceeded by the aggregate of the funds then on hand and of the funds to be derived from the taxes levied in the year 1884, and to be collected in the year 1885, to the extent only of $100.00, and such obligations so existing, as aforesaid, upon said Township Trustee, said Arista Glover, did, in violation of the duties of his office, and of the terms and conditions of his bond, as aforesaid, purchase and obtain from R. B. Pollard, a large amount of goods for the use of the schools of said Mill Creek Township and in payment thereof, did execute and deliver to said R. B. Pollard, whose Christian name is to plaintiff unknown, the following named and described promissory notes of said Mill Creek School Township, to-wit: One note for $772.50 dated May 19, 1885, and payable on the 20th day of January, 1887; one note for $787.25, dated on the 24th day of April, 1885, and payable on the 20th day of December, 1886; another note for $728.75, dated on the 24th day of April, 1885, and payable on the 20th day of February, 1887; another note for $717.66, dated on the 7th day of April and payable on the 20th day of December 1886; another note for $765.60, dated on the 19th day of May, 1885, and payable on the 20th day of November, 1886; another note for $772.50, dated on the 24th day of April, 1885, and payable on the 20th day of June, 1887; another note for $832.50, dated on the 5th day of May, 1885, and payable on the 20th day of

December, 1887; copies of each of said notes, designated respectively as exhibits "B," "C," "D," "E," "F," "G," and "H," are filed herewith and hereof made a part each and every of said notes being, according to their tenor and effect, made payable at the Citizens Bank of Attica, the same being then and there a Bank of discount and deposit within the State of Indiana.

And plaintiff avers, that said Arista Glover, as such Trustee, did not, at or prior to the purchase of said goods, the execution and delivery of the said promisory notes, or either or any of them, nor at any other time, obtain any order from the Board of Commissioners, of said Fountain County, authorizing him to contract any indebtedness for or in the name of said Mill Creek School Township, but the purchasing of said goods, the execution and delivery of said notes, and each and every one of them, was made in express violation of the provisions of the sections one and two, of the Act of the General Assembly, of the State of Indiana, entitled, "An Act to limit the power of the Township Trustees requiring them to designate certain days for transacting Township business," approved March 11th, 1875, the same being Sections numbered 6006 and 6007, of the Revised Statutes, of the State of Indiana.

Plaintiff avers, that thereafter and before the maturity thereof, the notes, designated as "B," "D," "F" and "H," were by the said Pollard duly endorsed in blank, for value received, and transferred to the Rhode Island Hospital & Trust Company of Providence, Rhode Island, a corporation organized and existing under and by virtue of the State of Rhode Island, and a citizen thereof, and in like manner, and before maturity, for value received, said notes, designated as exhibits "C" and "E," were by said Pollard duly endorsed in blank, and transferred to the Merchants National Bank of Providence, Rhode Island, a corporation organized and existing under and by virtue of the laws of Congress, and having its place of business in the City of Providence, in the State of Rhode Island, and being a citizen of said State; and in like manner and before maturity, for value received, said note, designated as exhibit "G," was by said Pollard duly endorsed in blank, and transferred to the Niantic National Bank of Providence, Rhode Island, a corporation organized and existing under the laws of Congress, and having its place of business in the City of Providence, in the State of Rhode Island, and being a citizen of said State. And afterwards, before maturity, the said Rhode Island Hospital and Trust Company, the Merchants National Bank, and the Niantic National Bank, transferred and delivered said notes, so endorsed and delivered to them respectively, to this plaintiff, and now this plaintiff is the owner and holder of said notes, and each and every of them.

Plaintiff avers, that subsequent to the execution of said endorsements, but prior to the institution of this action, said Pollard abandoned his residence and citizenship in the United States of America, and fled beyond the seas, and is now a resident of some foreign country; but of what country plaintiff is unable to aver, for the reason that the said Pollard keeps his whereabouts concealed; plaintiff is unable to aver whether said Pollard has acquired a citizenship in a foreign country for the same reason, but avers that he is not now, and was not

at the commencement of this action, either a resident or citizen of the State of Indiana. Wherefore, plaintiff says that the execution of each and every of said notes constituted a breach of said bond, and a cause of action has accrued to it, for the use and benefit of said relator, to have and recover of said defendants. and each and every of them, the amount of said several notes, and it prays judgment for the sum of Seven Thousand Dollars and for all proper relief.

To this complaint the appellees demurred in the Court below; their demurer was sustained, and Judgment was rendered in their favor, and from this Judgment the appellant has appealed.

The only question presented is, whether the appellees, Arista Glover as principal, or his co-appellees, as sureties upon his official bond, are liable by reason of said Arista Glover having issued the certificate as alleged in the complaint.

There is a difference between the 1st and 2nd paragraphs of complaint, only in this; that in the second paragraph of complaint it is alleged that Arista Glover, Trustee, "did in violation of the duties of his office, and of the terms and conditions of his bond, purchase and obtain from one R. B. Pollard a large amount of goods, for the use of the schools of said Mill Creek Township, and in payment thereof did execute and deliver to said Pollard" the certificate sued upon.

In the first paragraph there is no allegation that goods were purchased by the trustee.

Now, if any right of action exists in favor of the appellant, either upon the first or second paragraphs of his complaint, it is by reason of Section Two of the Act of the Legislature of the State of Indiana, approved March 5, 1883. (See Acts 1883, page 114) and which reads as follows;

"Sec. 2 And it is further provided that any Township Trustee, in any county of the State of Indiana, who shall contract any debt in the name or in behalf of any civil or school township of which he may be trustee, contrary to the provisions of Sections 1 and 2 of "An Act to limit the powers of Township Trustees, in incurring debts, and requiring him to designate certain days for transacting Township business," approved March 11, 1875, (the same being numbered 6006 and 6007 of the R. S. of the State of Indiana,) shall be personally liable, and liable on his official bond, to the holder of any contract or other evidence of such indebtedness, for the amount thereof."

Sections 6006 and 6007 of the Revised Statutes of Indiana, referred to in said Act, reads as follows;

(6006) "Power to incur debt.—1. Whenever it becomes necessary for the trustee of any township in this state to incur, on behalf of his Township, any debt or debts whose aggregate amounts shall be in excess of the fund on hand to which such debt or debts are chargeable, and of the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred, such trustee shall first procure an order from the Board of County Commissioners of the County in which said Township is situated, authorizing him to contract such indebtedness.

(6007) "Petition to incur debt.—2. Before the Board of Commissioners

shall grant such order, the township trustee shall file, in the Auditor's Office of his County, a petition, setting forth therein the object for which such debt or debts are to be incurred, and the approximate amount required, and shall make affidavit that he has caused notice to be given of the pendency of such petition, by posting notice in not less than five public places in his township, at least twenty days prior to the first day of the session of said board."

Now, sections 6006 and 6007 were enacted in order to prevent Township Trustees from incurring an indebtedness against the Township that would be a burden upon it, without first obtaining the consent of the Board of Commissioners to do so, and that to be obtained only after notice given to the people of the Township that they might have the opportunity to resist the granting of such an order.

The Act of the Legislature of 1883, above referred to, was to give to parties, who in good faith dealt with the trustee and furnished necessary and suitable goods for the use of the schools of the Township, contrary to said Sections 6006 and 6007, a right to recover against the trustee and upon his bond. But the Statute itself did not enlarge any of the duties, nor the rights of the trustee, nor the rights of those who dealt with them, in any manner other than as appeared therein

Now, in order that the Appellant, or his assignor might save this trustee and his bondsmen, he must allege in his complaint that a debt was contracted in the name of, or in behalf of the School or Civil Township. He must show that it was such a debt as would be binding upon the Township, if not in violations of said Sections 6006 and 6007.

A debt denotes, not only the obligation of the debtor to pay, but also the right of the creditor to enforce payment.

"It is essential to the idea of a debt, that an obligation must have arisen out of a contract, express or implied, in favor of some one occupying the relation of creditor, which entitled the latter to receive a sum of money, which obligation, by possibility, might, or ought to be, enforced against another.

"The mere delivery of a piece of paper which imports an obligation to pay money, but which is in fact no evidence of an actual existing debt, does not constitute the contracting of a debt.

"It cannot be supposed that it was the purpose of the statute to enable the holder of a contract, or other evidence of indebtedness, issued by a Township Trustee in the name or in behalf of his Township, to hold the Trustee personally liable, and liable on his official bond, whether an indebtedness has been in fact contracted or not. The recovery in any case is limited by the statute to the amount of the indebtedness, and not by the amount stipulated in the contract; hence given in a case in which there is no indebtedness—that is, no one who occupies the situation of a creditor—and there can be no recovery under the statute. Stanton v. Shipley 27 Fed. R. 498.

A Township Trustee cannot contract a debt for school supplies unless supplies suitable and necessary for the schools of the Township have been actually

delivered to and accepted by the Township, and in order to recover they must not only allege in this complaint that the goods were suitable and necessary for the school Township but that the goods were delivered to and received by the Township and further they must allege and prove the value of these goods delivered and received, and they recover not upon the certificate of the indebtedness but upon the amount and value of the goods delivered.

Reeve School Township vs. Dodson. 98 Ind. page 497. Bloomington School Township vs. National &c. 107 Ind. page 43. Cohen vs. Grimsley et al. 116 Ind. 323. Boyd vs. Mill Creek Township 114 Ind. 210. Boyd vs. Mill Creek Township, 124 Ind. 193.

In the first paragraph of complaint there is no allegation that goods were sold the Township, and in the second paragraph it is only alleged that the Trustee purchased and obtained goods for the use of the shools of said Township, but it does not allege that the goods were necessary or suitable for the schools of the township; that the goods were delivered to the Township and received by it, nor does it allege the value thereof.

They should, in order to make the complaint good against the Township Trustee, or the sureties upon his bond, allege such facts as show the creation of an actual indebtedness. That is, that goods suitable and necessary for the schools of the Township were delivered to and accepted by the Township, and that they were of a certain value.

It is alleged in the complaint that the notes sued on were made payable at a bank in the State of Indiana, and that the same were negotiable by the law merchant, and it is claimed that in the hands of the plaintiff no defense could be interposed against them. Are they negotiable by the law merchant? No. Why? For two reasons. The notes purport to be payable out of a particular fund and none other, and they purport to be the notes of a school township, a Municipal corporation, existing under public law, and endowed with restrictive powers granted for purely local purposes of a non-commercial character.

Such a body all must take notice has no power without express or clearly implied grant to make negotiable paper, and if their officers or agents attempt to put out corporate paper in a negotioble or commercial form it will be deemed void, or at most a simple obligation, the true consideration for which may be shown against a holder or purchaser thereof.

Reeve School Township vs Dodson, 98 Ind. page 499. Also, 102 Ind. page 464.

Whatever right the relator has, the appellant herein, he has under and by virtue of the assignment of the certificates mentioned in the complaints.

The right which he has is, the right which Pollard had and by a long line of decisions of the Indiana Supreme Court it is settled that a Township Trustee cannot execute papers negotiahle by the law merchant.

Judge Woods in the case of Stanton vs. Shipley in the U. S. Circuit Court for the District of Indiana, says; "He (meaning Township Trustee in Indiana) can not make obligations which in the hand of innocent purchasers will not be

subject to just defenses seem to have been put beyond dispute, and some of the later cases containing *dicta* to the effect that a Trustee can not execute a writing which will in itself be prima facia evidence of Township liability."

Then if no evidence of Township liability, no evidence of indebtedness, it could be no evidence of the liability of the Trustee or his sureties upon his official bond.

Judge Woods further says in said opinion in the case of Stanton vs. Shipley, which is reported and published in the Federal Reporter Vol. No. 27 page 499. "The construction of the Statute (referring to the one contended for by the Plaintiff) does not however meet my approval. It would lead to the conclusion-indeed it means, that an original holder or payee of such paper, though made without consideration, or made for fraudulent purposes to which he was a party, may recover the amount thereof not only from the Trustee, who may or may not have intended a wrong, but from his bondmen, innocent of any wrongful act or purpose. So interpeted, the Statute would be highly penal, and by the rule of strict construction I should be inclined to hold that liability in such cases does not attach to the sureties on such bond at all. The language of the Act is; "That any Township Trustee shall be personally liable and liable upon his official bond." The bondsmen if included, are included only by implication, and the implication by no means imperative or necessary. A personal liability and a liability on an official bond are different, and the remedies to be had in a suit upon one are different, from those available in an action upon the other; and consequently the provisions for liability on the bond is not meaningless or useless, though the sureties be not included.

But in my judgement, the liability declared by this statute is measured, not by the sum named in the forbidden contract or writing, but by the amount of the indebtedness evidenced thereby. By its terms the act applies to transactions in which a trustee "shall contract any debt," and he is made liable, to the holder of the evidence of such indebtedness for the amount thereof." The indebtedness therefor, the value of the consideration received by the Township, or possibly of that received by the Trustee for the Township, is the measure of liabilily. The right of the action is given, not upon the paper, but to the holder of it. It would seem to follow from this, and, as I understand, it has been conceded in argument, that the right of action is transferable with the paper to successive holders, but I think it clear that an assignee acquires no different or better right as against the Trustee or his bondsmen, than that of the first holder.

As will be seen from the above quotation, Judge Woods was very strongly inclined to the opinion that it was not the intention of the Legislature by the provisions of the statute to make the sureties liable for the act of the Trustee in violation thereof, but simply to render him personally liable, and the expression "liable upon his official bond" simply meant that he should be liable according to the terms of his official bond, and according to the statutory liability upon official bonds; the effect of which would be to deprive him of the benefit of the valuation and appraisement laws of the State of Indiana, and would perhaps make

the judgement more advantageous than the ordinary judgement at common law."

But it may be argued, that the Trustee himself is liable.

We think that in order to make the Trustee liable, individually and upon his official bond, that the complaint should show against him the same facts as against the bondsmen.

In other words it should allege such facts as show the creation of a valid debt, one for which there was a real consideration, one for which recovery could be had against the township if not made in violation of said Statutes, Sections 6006 and 6007. That the goods were suitable and necessary for the schools of the Township that they were delivered and received by the Township and also the value thereof.

And unless the complaint alleges these facts a recovery could not be had off of the Township, and if not off of the Township then it does not allege the creation of such a debt as can be recovered from the Trustee or his bondsmen upon his official bond.

Judge Woods in said case of Stanton vs. Shipley says: "In my judgement the liability declared by this statute is measured not by the sum named in the forbidden contract or writing, but by the amount of the indebtedness." "By its terms the Act applies to a transaction by which a Trustee shall contract any debt; and he is made liable to the holder of the evidence of such indebtedness for the amount thereof. The indebtedness therefore, the value of the consideration received by the Township, or possibly of that received by the Trustee for the Township is the measure of liability.

From whatever point we look at and examine the complaint both paragraphs thereof, it is not sufficient as against the defendant, Arista Glover, who was Township Trustee, or his co-defendants, who were his sureties upon his official bond, to withstand the demurrer thereto, assigning for cause in such demurrer the want of facts sufficient to state a good cause of action against the said defendants.

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